

APPENDIX A

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

SHIRDENIA BRYANT	:	Civil Action No. C-1-02-006
Plaintiff,	:	(Judge Spiegel)
vs.	:	
PRESCOTT BIGELOW, IV, et al.	:	<u>AFFIDAVIT OF GARY R.</u>
Defendants.	:	<u>LEWIS IN SUPPORT OF</u>
	:	<u>DEFENDANTS</u>
	:	<u>RESPONSE TO PLAINTIFFS'</u>
	:	<u>MOTION FOR LEAVE TO</u>
	:	<u>DEPOSE AMY CLEMENTS</u>

STATE OF OHIO                    )  
  )SS:  
COUNTY OF HAMILTON)

Gary R. Lewis, being first duly cautioned and sworn, states as follows:

1. I am the attorney of record for the Defendants Prescott Bigelow IV and Roseanne Christian in this action.
2. I received a letter dated July 14, 2003, (attached hereto as Exhibit A), from counsel for Plaintiffs requesting depositions of Prescott Bigelow IV, Paul Bigelow and Amy Clements.
3. On July 17, 2003, I sent a letter, (attached hereto as Exhibit B), to James Schwantes, an attorney representing the Plaintiffs, confirming that I did not represent Ms. Clements or Paul Bigelow, but that I would be willing to make the initial contact with Amy Clements and Paul Bigelow explaining that their depositions had been requested.

4. On August 12, 2003, I spoke with James Schwantes, regarding the deposition of Amy Clements.

5. On August 13, 2003, (attached hereto as Exhibit C), I sent a letter to Mr. Schwantes confirming that I had spoken to Ms. Clements. Ms. Clements told me on August 13, 2003 that she was leaving Cincinnati for an extended period of time to take care of her daughter in St. Louis, Missouri. Ms. Clements gave me her residence address in Oxford, Ohio at that time, which I gave to Mr. Schwantes.

6. On September 10, 2003, (attached hereto as Exhibit D), I received a letter from James Schwantes, requesting that I schedule the deposition of Amy Clements.

7. On September 12, 2003, I sent another letter to James Schwantes (attached hereto as Exhibit E), regarding Ms. Clements. Ms. Clements had told me she did not wish to attend a deposition, since she was providing daily medical care for her daughter, who was recovering from major surgery. Ms. Clements reiterated to me that she was willing to give her deposition by telephone or to answer written questions. In my September 12, 2003 letter, I provided Ms. Clements phone number in St. Louis, Missouri so that Mr. Schwantes could contact her regarding the deposition.

8. After my September 12, 2003 letter, I heard nothing further regarding the scheduling of this deposition until I received the motion for leave to depose Ms. Clements.

The above statements are true and correct, to the best of my knowledge and belief.

/s/ Gary R. Lewis  
Gary R. Lewis

Sworn to and subscribed before me in my presence this 14<sup>th</sup> day of November, 2003.

/s/ Debbie S. Siener

Notary Public

DEBBIE S. SIENER  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Expires April 2, 2006

Exhibit A

LAW OFFICES OF  
**William H. Blessing**  
119 East Court Street  
Suite 500  
Cincinnati, Ohio 45202

James E. Schwantes  
E-Mail: [jmschwantes@cincinnati.com](mailto:jmschwantes@cincinnati.com)

Telephone: 513-621-9191  
Telecopier: 513-621-7086

July 14, 2003

VIA TELECOPIER (513-721-7008)

Gary R. Lewis, Attorney  
915 Cincinnati Club Building  
30 Garfield Place  
Cincinnati, OH 45202

*Re: Bryant v. Bigelow, et al., Case No. C-1-02-006*

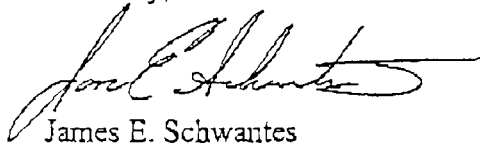
Dear Gary:

Attached is a motion and proposed order extending the time to complete discovery. Please review the motion and order, and get back to me with any necessary changes. I would like to file the motion this week if the form is agreeable.

Additionally, as we discussed, Plaintiffs would like to depose Prescott Bigelow, IV, Paul Bigelow, and Amy Clements. Please let me know some dates when these individuals are available for deposition. Provided that the time for discovery is extended, I would like to take the depositions sometime in August.

Thank you for your cooperation in this matter.

Sincerely,



James E. Schwantes

JES/

EXHIBIT B

**HARDIN, LEFTON, LAZARUS & MARKS, LLC**

ATTORNEYS AND COUNSELORS AT LAW

DONALD E. HARDIN  
DAVID H. LEFTON  
STEPHEN S. LAZARUS\*  
EDWARD G. MARKS  
DAVID E. HARDIN

\*ALSO ADMITTED IN D.C.

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OF COUNSEL:  
GARY R. LEWIS  
GARY R. LEWIS CO., LPA  
(513) 665-9222

TRICOUNTY OFFICE:  
29 NORTH D STREET  
HAMILTON, OHIO 45013-3128  
(513) 868-8229

July 17, 2003

James Schwantes, Esq.  
119 East Court Street  
Suite 500  
Cincinnati, Ohio 45202

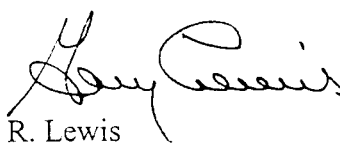
Re: Bryant v. Bigelow, et al.  
Case Number: C-1-02-006

Dear Jim:

Thank you for filing the Joint Motion To Extend Time To Complete Discovery. This will confirm that I will not be taking Shirdenia Bryant's deposition on July 30, 2003, as we had originally discussed. I do want to take the depositions of your clients in August. At this point, I am available August 6 or 15, 2003, assuming my August 11, 2003 trial has concluded by then. Also, the morning of August 19, 2003 and anytime on August 20, 2003 is currently open. Also, August 27, 2003, is open. Please let me know if any of these dates work for you and your clients. I have passed the request on to my client indicating you have requested his deposition. Although I do not represent Paul Bigelow or Amy Clements, I have no problem making the initial contact with them and advising that you are requesting their depositions as well.

I will be out of town until July 28, 2003 for vacation. We should discuss some potential deposition dates shortly after I get back, so we can reserve some dates in August.

Sincerely,

  
Gary R. Lewis

GRL/ds

cc: Prescott Bigelow  
Roseanne Christian

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August 13, 2003

James Schwantes, Esq.  
119 East Court Street  
Suite 500  
Cincinnati, Ohio 45202

Re: Bryant v. Bigelow, et al.  
Case Number: C-1-02-006

Dear Jim:

This will follow our phone conversation of August 12, 2003. I spoke to Amy Clements on August 13, 2003. Her current address is: 850 Weaver Road, Oxford, Ohio 45056. However, she is in the process, as of today, of relocating to St. Louis, Missouri, and she will be there for several months. Her daughter is about to have a lung transplant in St. Louis and Ms. Clements is going to be with daughter for an extended period of time. Since she is in transit to St. Louis, she is not available for deposition in the Cincinnati area at this time, nor will she be for several months. She does intend to return to her Oxford, Ohio residence, but does not expect that to be before the end of the year. I did ask her to call me once she arrived in St. Louis and provide me with contact information at that time. She would not be opposed to a telephone deposition, if you want to schedule it that way.

I can confirm that Paul Bigelow is available for deposition on August 19, 2003, beginning at 9:00 a.m. at your office. This will also confirm that Pete Bigelow is available for deposition on August 27, 2003, beginning at 10:30 a.m. at your office.

Shirdenia Bryant is scheduled for August 28, 2003, at 3:00 p.m. at my office and Harry Curtis is scheduled for August 29, 2003, beginning at 9:00 a.m. at my office.

Please advise if there are any problems or issues with this schedule.

Sincerely,

Gary R. Lewis

GRL/ds  
cc: Prescott Bigelow

Exhibit D

LAW OFFICES OF  
**William H. Blessing**  
119 East Court Street  
Suite 500  
Cincinnati, Ohio 45202

E-Mail: jimswantes@cinci.rr.com

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Telecopier: 513-621-7086

September 10, 2003

**VIA TELECOPIER (513-721-7008)**

Gary R. Lewis, Attorney  
Cincinnati Club Building, Suite 915  
30 Garfield Place  
Cincinnati, OH 45202

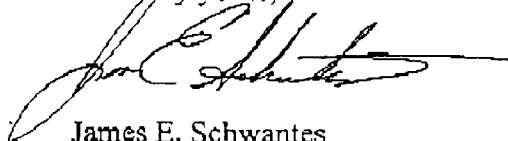
**Re: *Bryant v. Bigelow, et al.*, Case No. C-1-02-006**

Dear Gary:

In letters to you on August 5 and August 22, 2003, I asked to schedule the deposition of Amy Clements. I also spoke with you regarding the matter on August 19 and again following the deposition of Shirdenia Bryant on September 3, 2003. To date, I have not received a response from you as to when, or where, Ms. Clements will be made available for deposition. As I told you previously, if Ms. Clements is still in St. Louis attending to her daughter, we will go to St. Louis and conduct the deposition at a place that is convenient for her.

As you know, the discovery deadline is looming. Though I prefer to schedule depositions by agreement, I will arbitrarily notice Ms. Clements deposition if I do not receive a response from you as to her availability.

Sincerely yours,



James E. Schwantes

JES/

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September 12, 2003

James Schwantes, Esq.  
119 East Court Street  
Suite 500  
Cincinnati, Ohio 45202

Re: Bryant v. Bigelow, et al.  
Case Number: C-1-02-006

Dear Jim:

This is in response to your September 10, 2003 letter regarding Amy Clements. As I have previously advised you, I do not represent Ms. Clements. I have spoken with her. It is my understanding that she will not be returning to Cincinnati in the near future, certainly not this month. She is in St. Louis providing daily care for her daughter who recently underwent surgery.

Ms. Clements is willing to give a deposition over the telephone or to respond in writing to any written questions submitted to her. Since she is outside the jurisdiction of the court, I don't believe that noticing a deposition in this action is authorized by the federal rules, nor would it be appropriate under the circumstances.

The telephone number I have for Ms. Clements is 314-752-9547.

Sincerely,



Gary R. Lewis

GRL/ds

cc: Prescott Bigelow  
Roseanne Christian